

## 48A C.J.S. Judges § 211

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### C. Payment

### § 211. To whom payable

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(4)

**Compensation should be paid to the judge lawfully in possession of the office, and where a de facto judge is allowed to draw the salary of the office until ousted by proper proceedings, payment to such judge is a defense to an action against the State by a judge de jure.**

If the incumbent is in possession of the office under a certificate of election issued by the proper authority, the incumbent is entitled to receive the compensation incident to the office although his or her right to the office is being contested.<sup>1</sup> Where the law requires a commission to be issued, the person who has not received a commission is not entitled to recover the compensation of the office.<sup>2</sup> Where a judicial election is contested and the governor, pursuant to statute, appoints a temporary judge, no compensation other than that paid to the temporary judge can be made to anyone until the election contest is determined.<sup>3</sup> However, the person finally declared to have been elected is entitled to the full salary for the term to which he or she has been elected<sup>4</sup> even though he or she does not take the oath of office until the contest is settled.<sup>5</sup> A candidate in a judicial election who, without attempting to qualify, acquiesces in the performance of the duties of office

by another candidate declared elected is not entitled to the salary of the office although if he or she had acted properly and promptly he or she could have established a right to the office.<sup>6</sup>

***De facto judge.***

Since compensation annexed to an office is an incident to title to the office, ordinarily a de facto judge cannot recover compensation for his or her services<sup>7</sup> although it has been held that where a de facto judge renders services in good faith as a judge and is paid a salary while so acting, the State cannot recover the salary so paid.<sup>8</sup> Also, the de facto judge may be allowed to draw the salary of the office until ousted by proper proceedings.<sup>9</sup> The payment of the salary to a de facto judge is a defense to an action brought against the State by a judge de jure to recover the same salary.<sup>10</sup>

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**Footnotes**

- 1 Colo.—*Henderson v. Glynn*, 2 Colo. App. 303, 30 P. 265 (1892).
- 2 Cal.—*Legerton v. Chambers*, 32 Cal. App. 601, 163 P. 678 (2d Dist. 1917).
- 3 Tenn.—*Graham v. England*, 154 Tenn. 435, 288 S.W. 728 (1926).
- 4 Ky.—*Little v. Mann*, 309 Ky. 664, 218 S.W.2d 677 (1949).  
Tenn.—*State ex rel. Byrd v. Scott County*, 181 Tenn. 665, 184 S.W.2d 20 (1944).
- 5 Tenn.—*State v. Graham*, 161 Tenn. 557, 30 S.W.2d 274 (1930).
- 6 S.D.—*Bergh v. Gibbs*, 57 S.D. 634, 234 N.W. 616 (1931).  
As to forfeiture and waiver of right to compensation, see § 191.
- 7 Ark.—*Revis v. Harris*, 219 Ark. 586, 243 S.W.2d 747 (1951).  
Ky.—*Nagel v. Bosworth*, 148 Ky. 807, 147 S.W. 940 (1912).
- 8 Ohio—*State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 36 Ohio Op. 285, 76 N.E.2d 886 (1947).
- 9 Minn.—*Windom v. City of Duluth*, 137 Minn. 154, 162 N.W. 1075 (1917).
- 10 Ill.—*McKinley v. City of Chicago*, 369 Ill. 268, 16 N.E.2d 727 (1938).